IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 519 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SIPAI BACHUBHAI RAJEBHAI - Appellant(s)
Versus
STATE OF GUJARAT & 4 - Opponent(s)

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Appearance :
MR PJ YAGNIK for Appellant(s) : 1,
MR.K.T. DAVE, ADDL. PUBLIC PROSECUTOR for Opponent(s) : 1,
NOTICE SERVED for Opponent(s) : 2 - 5.

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 27/04/2006

ORAL JUDGMENT

The present appeal is filed against the judgement and order dated 17th February 1986 passed by the learned Sessions Judge, Bhavnagar in Sessions Case No.58 of 1985. The accused, five in number, were chargesheeted for the offence punishable under sections 147, 148, 149, 326,

323, 324, 506(2) of the Indian Penal Code (“IPC” for brevity) and section 135 of the Bombay Police Act. The accused were tried and the learned Sessions Judge, after taking into consideration the evidence, oral as well as documentary recorded finding to the effect that accused no.1 was guilty of offence punishable under section 324 of the IPC, whereas accused nos.2, 3 and 5 were held guilty of offence punishable under section 323 of IPC. So far as accused no.4 is concerned he was acquitted as no offence was proved against him.

2. The learned Judge was pleased to hold that none of the accused are found guilty of the offence under section 506(2) of IPC and section 135(B) of the Bombay Police Act, therefore, they were acquitted for the same.

3. The learned Judge after taking into consideration the circumstances under which the incident took place and the fact that the present accused side had lost a member of their family-son of accused no.1, though there is a provision for maximum three years imprisonment for offence under section 324 and maximum one year imprisonment for offence under section 323 awarded punishment of imprisonment till rising of the Court only

to accused nos.2, 3 and 5 and fine of Rs.250/- each, in default of seven days simple imprisonment. The learned Judge recorded a finding to the effect that this punishment will serve interest of justice.

4. So far as accused no.1 is concerned it is recorded by the learned Judge that the circumstances in which the incident took place, were sufficient to provoke any male member of the family, but then he further recorded that accused no.1 should have restrained himself form causing injuries by axe. Recording this the learned Judge declined to give benefit of provisions of Probation of Offenders Act, but at the same time moved by the fact that the accused no.1 had lost a member of the family-son, imposed six months rigorous imprisonment and Rs.500/- fine, only in default one month's rigorous imprisonment.

5. Mr.Yagnik, learned advocate for the appellant submitted that all the accused including the present appellant have paid fine on 17th February 1986. He further submitted that the learned Sessions Judge had extended bail and provided that within 90 days the appellant shall obtain order of bail from the High Court.

During trial also the appellant was on bail.

6. At the time of admission hearing of this matter this Court (Coram: R.A. Mehta, J.) passed the following order on 8th May 1986.

> "Admitted. To be heard with Criminal Appeal No.297/86/ petitioner to be released on bail. Same bail, fresh bonds."

7. Learned advocate Mr.Yagnik made available a copy of the common judgement dated 08.12.2005 in Criminal Appeals No.297 of 1986 and 501 of 1986, decided by this Court (Coram: A.M. Kapadia & S.R. Brahmbhatt, JJ.). The learned advocate for the appellant submitted that the reasons for which this Criminal Appeal was not placed for hearing along with Criminal Appeal No.297 of 1986, though there was an order to that effect are not known to him. He submitted that the said appeal, i.e. Criminal Appeal No.297 of 1986 is partly allowed qua sentence. The order of sentence is modified. The period of sentence undergone by the accused is ordered to be treated as substantive sentence imposed upon them. The learned advocate further submitted that Criminal Appeal No.501 of

1986 filed by the State of Gujarat against surviving accused was dismissed by the same judgement and order.

8. The learned advocate for the appellant submitted that looking to the reasons for which the Division Bench of this Court has taken the aforesaid view, a similar view be taken in this case also. In this regard he invited attention of the Court to the observations made by the Division Bench in para 37, which read as under:

> “It is required to be noted that the incident in question took place in the year 1985 and almost 20 years have elapsed and no untoward incident has happened thereafter despite the fact that both the parties, i.e. Complainant's side and accused are staying in the same village. Therefore, according to us, no useful purpose would be served by ordering them to serve out the remaining part of the sentence after a period of 20 years. According to us, the period of sentence undergone by each accused is required to be treated as substantive sentence imposed upon them and to that extend (sic.), i.e. Qua sentence only, the appeal field by the

accused, i.e. Criminal Appeal No.297 of 1986 is required to be allowed."

9. The learned Additional Public Prosecutor, Mr.Dave invited attention of the Court to the observations made by the Division Bench in para 30 of the judgement, which read as under:

> "Mr.H.N. Joshi, learned advocate for the accused and Mr.K.P. Raval, learned APP are unable to dislodge the said finding. We find ourselves in complete agreement with the said finding and resultant order of conviction recorded by the learned trial Judge against the surviving accused, i.e. A-1, A-3, and A-4 and according to us no other conclusion is possible except the conclusion reached by the trial Judge. Had A-2 been survived, the matter would have been considered differently."

10. Looking to the overall record of the case, this Court finds that the matter requires a similar approach qua the present appellant also. The conviction recorded by the learned Trial Judge cannot be and therefore, is

not disturbed. However, the appeal is allowed qua sentence only. The Court is conscious of the fact that the appellant had remained in custody only for two days, but then peculiar facts of the case do warrant that the appellant, who is aged 70 years as on date and the incident is of 1985, should not be asked now to undergo the sentence awarded by the learned Judge. The sentence is accordingly modified and the period of sentence undergone by him is treated as substantive sentence imposed upon him. The appeal is allowed.

(RAVI R. TRIPATHI, J.)

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